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APPLICATION NO	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO	CONFIRMATION NO
09 728,247	11 30 2000	Diamond V. Ryer	IL0116-SPEC	2503

7500 02 13 2003  
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EXAMINER

EVANS, FANNIE L.

ART UNIT PAPER NUMBER

2877

DATE MAILED: 02 13 2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/728,247

Applicant(s)

RYER, DAMOND V. *il*

Examiner

F. L. Evans

Art Unit

2877

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☐ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 15-25, 30-32, 34-36 and 38-40 is/are allowed.
- 6) ☐ Claim(s) 1-14, 26-29, 33 and 37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on 02 February 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

### **DETAILED ACTION**

#### **The Specification**

The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

The specification shall not contain drawings, 37 CFR § 1.58. The drawings on pages 29, 30 and 32 of the specification are objected to under 37 CFR § 1.58. Formal drawings in accordance with 37 CFR § 1.81.

#### **Claim Rejections - 35 USC § 112**

The following is a quotation of the second paragraph of 35 U.S.C. § 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-14, 26-29, 33 and 37 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Lines 2-5 of independent claim 1 are indefinite. With respect to line 3, what are the functions performed upon the detected optical energy? How are the performed functions the functions of a monochromator or a spectral energy source? Dependent claims 2-14 inherit the problems of independent claim 1. Clarification is required.

Claim 2 is indefinite in that it fails to specify where the means for receiving commands is located and what it is connected to. Is it in the spectral instrument or the power module?

Claims 5-7 are indefinite in that they fail to specify where the means for comparing data is located and what it is connected to. Is it in the spectral instrument or the power module?

Claim 8 is indefinite in that it fails to specify where the programmable electronics and means to indicate malfunction are located and what they are connected to. Is it in the spectral instrument or the power module?

Claims 10-14 are indefinite in that they fail to specify the orientation, location and function of the optical components. The claims fail to set forth the metes and bounds for which patent protection is sought.

Lines 6 and 7 of claims 26-28 are not understood. What does "a use of said spectral instrument" mean?

The claims are replete with indefinite language. The structure which goes to make up the device must be clearly and positively specified. The structure must be organized and correlated in such a manner as to present a complete operative device.

#### **Allowable Subject Matter**

Claims 1-14, 26-29, 33 and 37 would be allowable if rewritten or amended to overcome the rejections under 35 U.S.C. § 112, second paragraph, set forth in this Office action.

Claims 15-25, 30-32, 34-36 and 38-40 are allowed over the prior art of record.

As to claim 1, the prior art of record, taken alone or in combination, fails to disclose or render obvious a spectrometer system comprising a power module, in combination with the rest of the limitations of claim 1.

As to claim 15, the prior art of record, taken alone or in combination, fails to disclose or render obvious a spectral instrument comprising first and second monochromator portions arranged as set forth in the claim.

As to claim 19, the prior art of record, taken alone or in combination, fails to disclose or render obvious a spectral instrument comprising components arranged as set forth in the claim.

As to claim 40, the prior art of record, taken alone or in combination, fails to disclose or render obvious a method for using a spectral system comprising the steps set forth in the claim.

#### **Prior Art**

Wurm et al (US 4,867,563), Dingle (US 4,888,714), Schrammli et al (US 4,961,646) and Van Aken et al (US 5,319,437) disclose spectrometers, spectrophotometers, spectroradiometers and associated control means.

Chupp (US 3,936,191) and Shimadzu (JP 5-14987) disclose double-pass monochromators.

#### **Fax/Telephone Numbers**

Papers related to this application may be submitted to Technology Center 2800 by facsimile transmission. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The fax number is (703) 308-7722.

If applicant wishes to send a fax containing a Proposed Amendment for discussion during either a personal interview or a telephone interview then the fax should:

- 1) Contain either the statement "**DRAFT**" or "**PROPOSED AMENDMENT**" on the Fax Cover Sheet; and
- 2) Should be unsigned by the attorney or agent.

This will ensure that the amendment will not be entered into the application and will be forwarded to the examiner as quickly as possible.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to the examiner whose telephone number is (703) 308-4805. If


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attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frank G. Font, can be reached on (703) 308-4881. The TC Receptionist's telephone number is (703) 308-0956.

Any other inquiry of a technical nature, and all inquiries of a general nature including those relating to the status of an application should be directed to TC 2800 Customer Service Office whose telephone number is (703) 306-3329.

  
**F. L. EVANS**  
**PRIMARY EXAMINER**  
**ART UNIT 2877**

file  
February 8, 2003